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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,051	12/08/2005	Katsuyoshi Okabe	2005_1918A	9843
513 7590 04/02/2009 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503			EXAMINER NGUYEN, SON T	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 04/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,051	Applicant(s) OKABE ET AL.	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 3-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/9/09, 12/8/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of invention I, claims 1-2, in the reply filed on 2/9/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 3-6 have been withdrawn from consideration due to the claims belonging to a non-elected invention.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole et al. (2003/0101645A1) in view of JP11-56118 (on form PTO-1449, herein JP118,) and Knablein et al. (4291494).**

For claim 1, Cole et al. teach an apparatus for producing seedlings comprising: a closed-type structure (20) surrounded by light-interceptive thermally insulating walls (11-13); multi-staged seedling culture shelves (30) provided with a plurality of shelf boards (31) capable of mounting grafted seedlings (G) thereon, said seedling culture shelves being disposed within said closed-type structure; an artificial lighting device (35) capable of projecting light onto the grafted seedlings and a fan (107) capable of generating air stream over each of said seedling culture shelves; an air conditioning unit

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(112) capable of controlling the temperature and the humidity within said closed-type structure; a carbon dioxide gas supply unit (36,38, see [0055]) capable of supplying carbon dioxide gas into said closed-type structure. However, Cole et al. are silent about the artificial lighting device and the fan being installed on each of said seedling culture shelves; and a light-transmitting shield detachably disposed to cover the grafted seedlings mounted on each of said shelf boards of said seedling culture shelves, said light-transmitting shield being provided with a plurality of vent holes.

JP118 teaches an apparatus for producing seedlings comprising an artificial lighting device (29) and a fan (32) being installed on a seedling culture shelves 23,27. It would have been obvious to one having ordinary skill in the art at the time the invention was made to install an artificial lighting device and a fan as taught by JP118 directly on the seedling culture shelves of Cole et al. in order to provide more direct and concentrate light and air ventilation to the plants.

Knablein et al. teach an apparatus for producing seedlings comprising a light-transmitting shield (12) detachably disposed to cover the grafted seedlings mounted on shelf boards/containers, said light-transmitting shield being provided with a plurality of vent holes (39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a light-transmitting shield with vent holes as taught by Knablein et al. over the seedlings mounted on the shelf boards of Coles et al. in order to protect the seedlings therein.

For claim 2, in addition to the above, Knablein et al. teach wherein the plurality of vent holes of said light-transmitting shield are provided with means (50) of varying the

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rate of hole area thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ means of varying the rate of hole area as taught by Knablein et al. on the shield of Cole et al. as modified by Knablein et al. and JP118 in order to control the air flow rate entering the interior thereof.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner, Art Unit 3643